

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO**

UNITED STATES OF AMERICA	:	CASE NO.: 1:10CR00387
	:	
Plaintiff,	:	
	:	
	:	JUDGE SARA LIOI
vs.	:	
	:	
JAMES C. DIMORA , et al.,	:	MOTION FOR RELEASE FROM
Defendant.	:	DENTION PENDING SENTENCING
	:	AND SECOND TRIAL AND FOR A
	:	HEARING PURSUANT TO
	:	18 U.S.C. § 3143

Now comes Defendant James C. Dimora and moves this Court for a hearing pursuant to 18 U.S.C. § 3143 to permit Mr. Dimora to establish by clear and convincing evidence that he meets the conditions for release set forth in § 3143(a)(1).

18 U.S.C. § 3143(a) provides for release in pending sentencing in several different circumstances. Under 18 U.S.C. § 3143(a)(2), a defendant who has been convicted of a crime of violence or other enumerated crimes is eligible for release pending sentencing only if (A) (i) the judicial officer finds there is a substantial likelihood that a motion for acquittal or new trial will be granted; or (ii) an attorney for the Government has recommended that no sentence of imprisonment be imposed on the person; and (B) the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to any other person or the community. 18 U.S.C. § 3143(a)(2). This is a more stringent test than the one that applies to individuals who have been convicted of non-violent crimes, which requires only that the judge find by clear and convincing evidence that the person is not likely to flee or pose a danger to the

safety of any other person or the community if released. 18 U.S.C. § 3143(a)(1). It is under the later section that Mr. Dimora's request for release must be analyzed.

Specifically, at a hearing, Mr. Dimora seeks to present evidence that Mr. Dimora “is not likely to flee” if released pending sentencing and a second trial. In the course of presenting that evidence, Mr. Dimora will also establish that he “poses no danger to any person or the community.” It should be noted, however, that the Government did not appear to argue that Mr. Dimora posed a danger to any person or the community (see transcript from March 9, 2012 attached hereto as Ex. A, p. 12). It also appears that the Court ordered Mr. Dimora detained based on the sole concern of whether there was a likelihood that he would flee. Tr. p. 16. At a hearing on this motion, Mr. Dimora will present witnesses with regard to his lifelong ties to this community, the unlikelihood that he will flee his family and community, monitoring options available to the Court and other evidence that will establish that he is not likely to flee.

MEMORANDUM IN SUPPORT OF MOTION

Subsection (1)(a) of 18 U.S.C. § 3143, provides that a Court must find, by clear and convincing evidence that a person convicted of crimes carrying a likely term of incarceration does not pose a danger to any person or the community and is not likely to flee in order to continue a person on bond or add other conditions the continued release of that person. Subsections 1(b) and (c) of § 3143 provide the Court with the conditions available to secure a defendant's continued release.

Mr. Dimora was convicted, by jury, of numerous charges on March 9, 2012. Shortly after the verdicts were read and inspected, the Government made a motion to detain Mr. Dimora pursuant to 18 U.S.C. § 3143. The Court entertained argument by the parties and no witnesses were called. The Court took a brief recess to consider the addition of a monitoring component to

Mr. Dimora's continued release and to consult with someone from pretrial release. Tr. p. 15. Upon return from that recess, the detention was ordered. Id. at 16.

Mr. Dimora will present a number of credible witnesses who will testify about facts supporting a likelihood that Mr. Dimora will not flee. Evidence will establish lifetime of association with and residence in Cuyahoga County, a network of family and friends in Cuyahoga County and medical needs that impede any possibility a lifestyle necessary to flight. Each of these areas build the factual base to establish, clearly and convincingly, that Mr. Dimora is not at all likely to flee. In addition, evidence will be presented detailing the reliability of Mr. Dimora's conduct while on pretrial release including his full cooperation with the program. At an evidentiary hearing, Mr. Dimora will present information with regard to additional conditions that would help secure his presence. Mr. Dimora will present evidence with regard to private and Government monitoring that are available and will allay concerns about the risk of flight.

The Government relied upon the length of Mr. Dimora's sentence in their request to revoke his bond. However, if that factor was determinative under 18 USC § 3134(a)(1), the statute would make bond mandatory for defendants facing a lengthy period of incarceration. At the hearing, Mr. Dimora will present evidence of several recent cases involving public office holders facing a lengthy sentence that have been released pending sentencing and commitment.

Respectfully submitted,
WILLIAM T. WHITAKER CO., L.P.A.

/s/ William Whitaker
William T. Whitaker # 0007322
Andrea L. Whitaker # 0074461
54 East Mill Street, Suite 301
Akron, Ohio 44308
(330) 762-0287; (330) 762-2669 Facsimile
whitaker@whitakerlawlpa.com
Attorneys for Defendant Dimora

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was electronically filed this 20th day of March, 2012. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

/s/ William Whitaker _____

William Whitaker